

**SCHAPIRO DECLARATION
EXHIBITS CONTINUED**

Schapiro Exhibit 27

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC TELEVISION,)
INC., PARAMOUNT PICTURES CORPORATION,)
AND BLACK ENTERTAINMENT TELEVISION,)
LLC,)
PLAINTIFFS,) CASE NO.
07-CV-2103

VS.)

YOUTUBE INC., YOUTUBE, LLC AND)
GOOGLE, INC.,)

DEFENDANTS.)
-----)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET AL.,)
ON BEHALF OF THEMSELVES AND ALL)
OTHERS SIMILARLY SITUATED,)

PLAINTIFFS,) CASE NO.
07-CV-3582

VS.)

YOUTUBE, INC., YOUTUBE, LLC, AND)
GOOGLE, INC.,)

DEFENDANTS.)
-----)

VIDEOTAPED DEPOSITION OF AMY POWELL
TAKEN ON TUESDAY, DECEMBER 15, 2009

JOB NO. 18310

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)	
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LEAGUE LIMITED, BOURNE CO., ET AL.,)	
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YOUTUBE, INC., YOUTUBE, LLC, AND)	
GOOGLE, INC.,)	
)	
DEFENDANTS.)	
-----)	

Videotaped deposition of AMY HOWELL, taken on
behalf of the Defendants, at 350 South Grand Avenue,
Suite 2500, Los Angeles, California, on Tuesday,
December 15, 2009, at 9:25 a.m., before NIKKI ROY,
CSR. No. 3052.

1 APPEARANCES:

2
3 FOR THE PLAINTIFFS:

4
5 JENNER & BLOCK, LLP
6 BY: SUSAN J. KOHLMANN, ESQ.
7 919 Third Avenue
8 37th Floor
9 New York, New York 10022-3908
10 212.891.1600
11 skohlmann@jenner.com

12 FOR DEFENDANT GOOGLE:

13 WILSON SONSINI GOODRICH & ROSATI
14 BY: BART E. VOLKMER, ESQ.
15 650 Page Mill Road
16 Palo Alto, California 94304-1050
17 650.565.3508
18 bvolkmer@wsgr.com

19 ALSO PRESENT:

20 PAUL KOENIG, Paramount
21 REBECCA PRENTICE, General Counsel, Paramount
22 SCOTT McNAIR, Videographer
23
24
25

1 09:41:29 MS. KOHLMANN: Objection as to form.

2 09:41:31 You can answer.

3 09:41:31 THE WITNESS: For the film Transformers we

4 09:41:40 uploaded the official approved trailer to YouTube.

5 09:41:44 BY MR. VOLKMER:

6 09:41:48 Q. Did you upload any other materials besides

7 09:41:50 the official trailer to YouTube?

8 09:41:52 A. We always only upload approved materials

9 09:41:56 that have been routed through the marketing

10 09:41:59 executives, talent and filmmakers VIA approved upload

11 09:42:04 account.

12 09:42:08 MR. VOLKMER: Move to restrike the response

13 09:42:10 as nonresponsive.

14 09:42:11 Q. Did you upload any other materials besides

15 09:42:13 the official trailer to YouTube with respect to the

16 09:42:16 Transformers promotional campaign?

17 09:42:19 MS. KOHLMANN: Objection.

18 09:42:20 You can answer.

19 09:42:24 THE WITNESS: For Transformers 2, which is

20 09:42:26 the film I was referencing, we uploaded the official

21 09:42:31 trailer and the official approved clips from the EPK.

22 09:42:37 BY MR. VOLKMER:

23 09:42:37 Q. What about for the original Transformers

24 09:42:40 movie, did Paramount's interactive marketing

25 09:42:43 department engage in any viral marketing of that film

1 09:42:46 using YouTube?

2 09:42:47 A. I don't recall.

3 09:43:00 Q. How long ago did Paramount upload the

4 09:43:03 Transformers 2 trailer to YouTube?

5 09:43:09 A. The Transformers 2 final trailer was earlier

6 09:43:16 this year. I don't recall specifically.

7 09:43:20 Q. So Paramount's interactive marketing

8 09:43:25 department has continued to use YouTube for

9 09:43:28 promotional purposes after this lawsuit was filed; is

10 09:43:31 that correct?

11 09:43:31 MS. KOHLMANN: Objection as to form.

12 09:43:33 You can answer.

13 09:43:34 THE WITNESS: Can you repeat the question,

14 09:43:37 please.

15 09:43:37 BY MR. VOLKMER:

16 09:43:37 Q. Sure. Paramount's interactive marketing

17 09:43:39 department has continued to use YouTube for

18 09:43:41 promotional purposes after this lawsuit was filed; is

19 09:43:44 that correct?

20 09:43:45 A. We use YouTube as we do any other website

21 09:43:48 that we're in business with, which is to upload

22 09:43:51 approved materials for the marketing of our films.

23 09:43:55 Q. Right. And my question was, did Paramount's

24 09:43:59 interactive marketing department continue to use

25 09:43:59 YouTube for promotional purposes after this lawsuit

1 09:44:01 was filed?

2 09:44:02 MS. KOHLMANN: Objection; asked and

3 09:44:02 answered.

4 09:44:12 You can answer.

5 09:44:13 THE WITNESS: As I said, YouTube is one of

6 09:44:15 many websites that we use to market our films with

7 09:44:17 approved materials.

8 09:44:19 BY MR. VOLKMER:

9 09:44:22 Q. That doesn't respond to the question though.

10 09:44:24 The question was, after this lawsuit was filed, did

11 09:44:28 Paramount continue to use YouTube to promote its

12 09:44:31 films?

13 09:44:31 MS. KOHLMANN: Objection; asked and answered

14 09:44:33 and getting argumentative.

15 09:44:35 You can answer.

16 09:44:36 THE WITNESS: We use YouTube to upload

17 09:44:41 approved marketing materials as we do any other

18 09:44:44 website that we're in business with.

19 09:44:46 BY MR. VOLKMER:

20 09:44:46 Q. And that practice of using YouTube to upload

21 09:44:49 approved marketing materials has taken place after

22 09:44:53 the filing of this lawsuit which is in March of 2007?

23 09:44:57 A. That is correct.

24 09:44:58 Q. The materials that Paramount's employees and

25 09:45:19 agents have uploaded to YouTube for promotional

1 09:45:22 purposes, those materials are authorized to be on the

2 09:45:25 YouTube service; is that right?

3 09:45:27 MS. KOHLMANN: Objection as to form.

4 09:45:33 BY MR. VOLKMER:

5 09:45:33 Q. You can answer.

6 09:45:34 A. I can only speak on behalf of my team.

7 09:45:37 Q. Sure. So the materials that were uploaded

8 09:45:41 by your team or by agents of Paramount at the

9 09:45:45 direction of your team, those materials that have

10 09:45:48 been uploaded to YouTube, they are authorized to be

11 09:45:51 on the YouTube service, correct?

12 09:45:52 MS. KOHLMANN: Objection as to form.

13 09:45:55 You can answer.

14 09:45:55 THE WITNESS: To the best of my knowledge,

15 09:45:58 my team has always had the direction of only

16 09:46:02 uploading approved materials.

17 09:46:06 BY MR. VOLKMER:

18 09:46:07 Q. Would you say that everything that your team

19 09:46:09 has uploaded or has approved to be uploaded, that set

20 09:46:14 of materials are authorized?

21 09:46:15 MS. KOHLMANN: Objection; vague.

22 09:46:19 You can answer.

23 09:46:20 THE WITNESS: I'm not sure I know what you

24 09:46:21 mean by "authorized."

25

1 10:19:04 A. Uh-huh.

2 10:19:05 Q. Were there any other instances in which a

3 10:19:08 Paramount marketing employee or agent uploaded clips

4 10:19:12 from that film to YouTube to promote the film?

5 10:19:15 MS. KOHLMANN: Objection.

6 10:19:17 THE WITNESS: To the best of my knowledge,

7 10:19:18 all materials were uploaded VIA the same destination

8 10:19:22 within YouTube.

9 10:19:23 BY MR. VOLKMER:

10 10:19:28 Q. And how about the film Blades of Glory, did

11 10:19:31 Paramount use YouTube to promote that film?

12 10:19:33 MS. KOHLMANN: Objection.

13 10:19:34 THE WITNESS: I believe so.

14 10:19:36 BY MR. VOLKMER:

15 10:19:36 Q. And how did Paramount use YouTube to promote

16 10:19:40 that film?

17 10:19:40 A. Uploading approved materials, clips, trailer

18 10:19:45 to YouTube.

19 10:19:45 Q. Was there a promotion or marketing campaign

20 10:19:59 on YouTube that you thought was more successful than

21 10:20:03 the others?

22 10:20:03 MS. KOHLMANN: Objection as to form; vague.

23 10:20:05 You can answer.

24 10:20:06 THE WITNESS: Not necessarily.

25

1 10:20:07 BY MR. VOLKMER:

2 10:20:18 Q. Are you aware of all the account names and
3 10:20:21 user names that Paramount has used to upload
4 10:20:23 materials to YouTube?

5 10:20:26 MS. KOHLMANN: Objection as to form.

6 10:20:30 THE WITNESS: No, I wouldn't say that I am.

7 10:20:32 BY MR. VOLKMER:

8 10:20:36 Q. Is there anyone in your department that
9 10:20:38 would know all of the account names and user names
10 10:20:41 that Paramount has used to upload materials to
11 10:20:44 YouTube?

12 10:20:44 MS. KOHLMANN: Objection as to form.

13 10:20:46 THE WITNESS: No, it's a large company.

14 10:20:48 BY MR. VOLKMER:

15 10:21:07 Q. In the ordinary course of your job, would
16 10:21:09 you or someone working for you keep a list of all the
17 10:21:13 user names that have been used to upload materials to
18 10:21:16 YouTube?

19 10:21:16 MS. KOHLMANN: Objection as to form.

20 10:21:21 THE WITNESS: For my specific department the
21 10:21:26 team member who is leading a campaign would have
22 10:21:31 knowledge of the accounts that he or she is using.

23 10:21:34 BY MR. VOLKMER:

24 10:21:43 Q. So is the answer to that question no?

25 10:21:45 MS. KOHLMANN: Objection.

1 10:21:47 THE WITNESS: Can you repeat the question?

2 10:21:48 BY MR. VOLKMER:

3 10:21:48 Q. Sure. In the ordinary course of your job,

4 10:21:50 would you or someone who worked for you keep a list

5 10:21:53 of all the YouTube user names or account names that

6 10:21:57 have been used to upload materials to the YouTube

7 10:22:00 service?

8 10:22:01 MS. KOHLMANN: Objection as to form.

9 10:22:04 You can answer.

10 10:22:04 THE WITNESS: My team members would keep

11 10:22:07 track of the user names that they specifically would

12 10:22:10 use.

13 10:22:15 BY MR. VOLKMER:

14 10:22:15 Q. And you said that Paramount was a big

15 10:22:16 company earlier. Are there circumstances in which

16 10:22:20 there were uploads of Paramount material to YouTube

17 10:22:23 for promotional reasons that occurred outside of the

18 10:22:28 purview of your department?

19 10:22:30 MS. KOHLMANN: Objection as to form.

20 10:22:32 THE WITNESS: I wouldn't know.

21 10:22:33 BY MR. VOLKMER:

22 10:22:42 Q. You never heard of any other departments at

23 10:22:46 Paramount uploading materials to YouTube for

24 10:22:51 promotional or marketing purposes?

25 10:22:53 MS. KOHLMANN: Objection as to form.

1 10:22:56 THE WITNESS: No.

2 10:22:56 BY MR. VOLKMER:

3 10:23:03 Q. Didn't you have occasion to view materials

4 10:23:05 on YouTube and make determinations about whether they

5 10:23:07 were authorized marketing material or not?

6 10:23:12 MS. KOHLMANN: Objection.

7 10:23:14 You can answer.

8 10:23:14 THE WITNESS: Can you repeat the question?

9 10:23:15 BY MR. VOLKMER:

10 10:23:15 Q. Sure. Didn't you have occasion in the

11 10:23:17 course of your employment to view materials on

12 10:23:20 YouTube and make determinations about whether they

13 10:23:22 were authorized marketing materials or not?

14 10:23:24 MS. KOHLMANN: Same objection.

15 10:23:25 You can answer.

16 10:23:25 THE WITNESS: In specific instances, yes.

17 10:23:28 BY MR. VOLKMER:

18 10:23:29 Q. In the course of performing that task, did

19 10:23:31 you ever come across marketing material that had been

20 10:23:37 uploaded to YouTube by Paramount but did not emanate

21 10:23:40 from your department?

22 10:23:42 A. No, I don't recall so.

23 10:23:50 MS. KOHLMANN: Bart, we've been going about

24 10:23:52 an hour. So if you get to a point you think we can

25 10:23:56 break, can we do that?

1 02:01:17 BY MR. VOLKMER:

2 02:01:25 Q. Didn't your frustrations with BayTSP

3 02:01:28 removing approved Paramount marketing material from

4 02:01:31 YouTube continue for some lengthy period of time?

5 02:01:35 MS. KOHLMANN: Objection as to form; vague.

6 02:01:37 You can answer.

7 02:01:38 THE WITNESS: No, I don't know that I would

8 02:01:41 say that.

9 02:01:42 BY MR. VOLKMER:

10 02:01:43 Q. Didn't that frustration last for months that

11 02:01:46 Bay continued to remove material that your department

12 02:01:51 had either uploaded or approved to be on the YouTube

13 02:01:53 service?

14 02:01:54 MS. KOHLMANN: Objection; asked and

15 02:01:54 answered.

16 02:01:56 You can answer.

17 02:01:56 THE WITNESS: I don't recall the specific

18 02:01:59 amount of time we had the disagreement.

19 02:02:04 BY MR. VOLKMER:

20 02:02:19 Q. As a result of BayTSP mistakenly removing

21 02:02:25 marketing material from the YouTube service you asked

22 02:02:27 that you have an opportunity to review material

23 02:02:33 before it was taken down from YouTube; is that right?

24 02:02:36 MS. KOHLMANN: Objection; lacks foundation;

25 02:02:39 form.

1 02:02:39 You can answer.

2 02:02:40 THE WITNESS: Can you repeat the question?

3 02:02:43 BY MR. VOLKMER:

4 02:02:44 Q. Sure. As a result of BayTSP mistakenly
5 02:02:47 removing marketing material from the YouTube service
6 02:02:51 you asked that you have an opportunity to review
7 02:02:54 material before it was taken down from YouTube; is
8 02:02:57 that right?

9 02:02:58 A. As part of our -- as part of determining how
10 02:03:02 our partnership would work, we did put several
11 02:03:05 practices in place that would help us both be able to
12 02:03:29 intelligently identify approved materials, one of
13 02:03:13 which was for them to call me and ask me, just as we
14 02:03:16 would ask any other party to call and ask me if
15 02:03:19 content was questionable.

16 02:03:42 Q. The reason that you would be called would be
17 02:03:43 to make a determination as to whether the material
18 02:03:45 that was proposed for removal, whether or not that
19 02:03:49 material was approved Paramount marketing?

20 02:03:53 MS. KOHLMANN: Objection as to form.

21 02:03:58 You can answer.

22 02:03:58 THE WITNESS: The process was put in place
23 02:04:00 not only to determine if content should be removed or
24 02:04:03 not, but to identify what our approved marketing
25 02:04:07 materials were so we could all be on the same page in

1 02:04:13 terms of what that material consisted of.

2 02:04:15 BY MR. VOLKMER:

3 02:04:19 Q. Did any other parties besides BayTSP ever

4 02:04:22 call you and ask whether material on online

5 02:04:29 video-sharing services was authorized or

6 02:04:34 unauthorized?

7 02:04:35 A. Yes.

8 02:04:35 Q. Who else called you?

9 02:04:37 A. Either call or e-mail, I should clarify.

10 02:04:40 Q. Sure.

11 02:04:40 A. Many -- all the time webmasters, different

12 02:04:44 websites, end-users, happens frequently.

13 02:04:49 Q. End-users would contact you and ask you

14 02:04:52 whether or not material on the Internet was approved

15 02:04:55 Paramount marketing material?

16 02:04:56 A. Yes.

17 02:04:57 MS. KOHLMANN: Objection; asked and

18 02:04:58 answered.

19 02:04:58 THE WITNESS: Pardon me, yes.

20 02:04:59 BY MR. VOLKMER:

21 02:05:03 Q. And that would take usually an e-mail

22 02:05:06 format; is that right?

23 02:05:07 MS. KOHLMANN: Objection.

24 02:05:08 THE WITNESS: Either e-mail or phone call,

25 02:05:15 depending on how a person could track me down.

1 02:05:33 MR. VOLKMER: Let's mark Exhibit 16.
2 02:05:34 (Powell Exhibit 16, document bearing
3 02:05:34 Bates number VIA 003724421, marked for
4 02:05:46 identification, as of this date.)
5 02:05:46 MS. KOHLMANN: Thank you.
6 02:05:47 BY MR. VOLKMER:
7 02:06:04 Q. Exhibit 16 is a document that was produced
8 02:06:06 by BayTSP in this litigation. It's an e-mail
9 02:06:11 exchange from June 26th and 27th, 2006. Al Perry
10 02:06:21 John Salter, Mark Ishikawa appear in this e-mail
11 02:06:25 thread.
12 02:06:25 Do you know who Mr. Perry is?
13 02:06:27 A. Yes.
14 02:06:29 Q. And what is his role at Paramount?
15 02:06:31 A. He works on Scott Martin's team, which is
16 02:06:36 the Paramount legal team.
17 02:06:39 Q. And who is Mr. Salter?
18 02:06:43 A. I'm not sure.
19 02:06:48 Q. And Mark Ishikawa ran BayTSP; is that right?
20 02:06:51 A. He works at BayTSP. I'm not sure of his
21 02:06:56 position.
22 02:06:56 Q. In Mark Ishikawa's e-mail to Mr. Salter he
23 02:07:08 writes:
24 02:07:08 Need to discuss how we get the
25 02:07:10 marketing people to let us know what

1 02:45:41 In light of all of the additional
2 02:45:43 focus on infringement on YouTube, I'm
3 02:45:45 checking with Scott to see if we are
4 02:45:46 taking down clips.
5 02:45:49 Do you know what the additional focus on
6 02:45:50 infringement that Mr. Perry references is?
7 02:45:54 MS. KOHLMANN: Objection. Are you asking
8 02:45:57 her as she sits here today?
9 02:46:00 MR. VOLKMER: Yeah, I'm asking her if she
10 02:46:02 has any understanding as to what Mr. Perry was
11 02:46:05 talking about.
12 02:46:05 MS. KOHLMANN: Objection; it's not on this
13 02:46:09 document; lacks foundation.
14 02:46:10 You can answer.
15 02:46:11 THE WITNESS: I am not clear on what he's
16 02:46:14 talking about.
17 02:46:33 MR. VOLKMER: Let's mark Exhibit 20.
18 02:46:36 (Powell Exhibit 20, document bearing
19 02:46:36 Bates number VIA 00431656, marked for
20 02:46:40 identification, as of this date.)
21 02:46:40 MS. KOHLMANN: Thanks.
22 02:46:48 BY MR. VOLKMER:
23 02:47:03 Q. Exhibit 20 is an e-mail exchange produced by
24 02:47:05 Viacom in this litigation. The e-mail thread took
25 02:47:11 place on October 15th and 16th, 2006. And the first

1 02:47:18 message in the thread you write to Tamar Teifeld and
2 02:47:23 Mickey Worsnup and you say:
3 02:47:26 Is this one of our approved
4 02:47:27 clips, question mark.
5 02:47:28 There's a YouTube URL and the subject line
6 02:47:32 is Flags of Our Fathers.
7 02:47:34 Do you know why you reached out to
8 02:47:39 Ms. Teifeld and Mr. Worsnup about the authorization
9 02:47:43 status of this clip?
10 02:47:44 A. I don't know specifically. I presume I was
11 02:47:46 in a meeting and asking them if they were in front of
12 02:47:49 a computer.
13 02:47:51 Q. And Ms. Teifeld responds:
14 02:47:55 Yes, these are clips from the
15 02:47:56 EPK.
16 02:47:57 A. Uh-huh.
17 02:47:57 Q. What is the EPK?
18 02:47:59 A. Electronic press kit.
19 02:48:00 Q. And are clips that are included in the EPK
20 02:48:06 that are uploaded to YouTube authorized to be on
21 02:48:09 YouTube?
22 02:48:09 MS. KOHLMANN: Objection.
23 02:48:11 THE WITNESS: On each specific film we put
24 02:48:14 together what's known as an EPK, which is a
25 02:48:18 collection of approved clips and content for any said

1 02:48:21 film. Those are the clips that are approved for
2 02:48:23 distribution online.
3 02:48:28 BY MR. VOLKMER:
4 02:48:31 Q. So if there's an EPK clip that's appearing
5 02:48:34 on YouTube, it's authorized to be on the YouTube
6 02:48:39 service, correct?
7 02:48:39 MS. KOHLMANN: Objection; misstates the
8 02:48:41 record.
9 02:48:42 THE WITNESS: Not necessarily.
10 02:48:43 BY MR. VOLKMER:
11 02:48:44 Q. Why is that?
12 02:48:45 A. Only the final approved locked color
13 02:48:50 corrected sound mixed final version of the EPK clips
14 02:48:53 are approved for distribution across YouTube and
15 02:48:59 other websites.
16 02:49:00 Q. But all the final versions meeting all the
17 02:49:10 criteria you just listed, those EPK clips are
18 02:49:13 authorized to be on the YouTube service, correct?
19 02:49:15 MS. KOHLMANN: Objection as to form.
20 02:49:16 THE WITNESS: Presumably, yes.
21 02:49:21 BY MR. VOLKMER:
22 02:49:28 Q. This is the same YouTube URL that's
23 02:49:32 referenced in the previous exhibit, Exhibit 19. Do
24 02:49:38 you know if you told Mr. Perry whether or not this
25 02:49:43 clip was authorized to be on YouTube?

1 02:49:45 A. I don't recall.

2 02:50:08 Q. The clip that's referenced in the e-mail on

3 02:50:11 Exhibit 20, that's a clip that was authorized to be

4 02:50:14 on YouTube, correct?

5 02:50:15 MS. KOHLMANN: Objection.

6 02:50:18 THE WITNESS: I would have to review the

7 02:50:19 clip to tell you.

8 02:50:20 BY MR. VOLKMER:

9 02:50:24 Q. Ms. Teifeld says, where you wrote to

10 02:50:27 Ms. Teifeld "Is this one of our approved clips?" And

11 02:50:30 she wrote back "Yes, these clips are from the EPK."

12 02:50:33 Based on this e-mail, isn't the most logical

13 02:50:40 inference that the clip being referenced here is one

14 02:50:43 that was approved by Paramount to appear on YouTube?

15 02:50:45 MS. KOHLMANN: Objection as to form.

16 02:50:47 THE WITNESS: Based on Tamar's e-mail she's

17 02:50:51 saying, yes, these clips are from the EPK, and hence

18 02:50:53 we would assume that, yes, they are approved clips.

19 02:50:57 BY MR. VOLKMER:

20 02:50:57 Q. And you had no reason to question

21 02:51:00 Ms. Teifeld's assessment, correct?

22 02:51:02 A. Correct.

23 02:51:13 Q. You did not ask that this clip be removed

24 02:51:16 from the YouTube service, did you?

25 02:51:18 A. I don't recall.

1 02:51:19 Q. Based on this e-mail in which Ms. Teifeld
2 02:51:24 says that they are approved clips that came from the
3 02:51:29 EPK, do you think that you asked anyone that these --
4 02:51:33 that this clip be removed?
5 02:51:34 MS. KOHLMANN: Objection.
6 02:51:39 THE WITNESS: I do not believe I would have
7 02:51:41 requested it to be removed, with the understanding it
8 02:51:43 was an approved clip from the EPK.
9 02:52:22 MR. VOLKMER: Let's mark Exhibit 21.
10 02:52:23 (Powell Exhibit 21 VIA11786487,
11 02:52:23 document bearing Bates number VIA11786487,
12 02:52:40 marked for identification, as of this date.)
13 02:52:40 BY MR. VOLKMER:
14 02:52:56 Q. This is an e-mail exchange from May 8th and
15 02:52:58 9th, 2007 produced by Viacom in this litigation.
16 02:53:04 In the first message in this thread Kristina
17 02:53:08 Tipton asked whether Paramount should leave up a
18 02:53:13 Transformers clip that appeared on the Ellen
19 02:53:17 Degeneres show; is that right?
20 02:53:18 A. Yes.
21 02:53:18 Q. And it says -- the message from Ms. Tipton
22 02:53:23 says:
23 02:53:24 Publicity wouldn't let us post
24 02:53:26 the clip officially online.
25 02:53:28 Why wouldn't publicity allow Paramount to

1 03:56:26 down.
2 03:56:28 Why did you need to speak with the publicity
3 03:56:29 department?
4 03:56:30 A. I don't recall.
5 03:56:31 Q. Who would you have checked with in the
6 03:56:35 publicity to determine -- in the publicity department
7 03:56:37 to make determinations about whether materials should
8 03:56:41 be removed from YouTube?
9 03:56:42 MS. KOHLMANN: Objection; calls for
10 03:56:42 speculation.
11 03:56:43 You can answer.
12 03:56:44 THE WITNESS: I would have asked whoever the
13 03:56:48 publicist handling that movie was.
14 03:56:49 BY MR. VOLKMER:
15 03:56:50 Q. And who was the publicist for the film
16 03:56:55 that's being discussed here, Jackass 2?
17 03:56:58 A. I don't recall.
18 03:56:59 Q. So were the publicists for Paramount films
19 03:57:08 engaged in the upload of materials to promote the
20 03:57:14 films?
21 03:57:16 MS. KOHLMANN: Objection.
22 03:57:17 You can answer.
23 03:57:17 THE WITNESS: No, not to the best of my
24 03:57:19 knowledge.
25

1 03:57:20 BY MR. VOLKMER:

2 03:57:22 Q. So why would you need to check with someone
3 03:57:24 in publicity before confirming which videos should be
4 03:57:28 taken down?

5 03:57:30 A. On certain films with unique circumstances,
6 03:57:33 as with the film Jackass, certain clips were approved
7 03:57:37 for different usages. Some were only approved for
8 03:57:41 online and some were only approved to live in the
9 03:57:45 offline world.

10 03:57:47 Q. Are you saying that you needed to check with
11 03:57:57 publicity to determine whether clips were permitted
12 03:58:04 to be marketed in the online world in the case of
13 03:58:07 Jackass 2?

14 03:58:11 MS. KOHLMANN: Objection to form.

15 03:58:12 You can answer.

16 03:58:13 THE WITNESS: To the best of my knowledge,
17 03:58:16 yes. In the film Jackass 2 we had specific
18 03:58:21 strategies put in place as to where clips would be
19 03:58:25 positioned and distributed.

20 03:58:28 BY MR. VOLKMER:

21 03:58:29 Q. And the publicity department was in charge
22 03:58:30 of that decision?

23 03:58:32 A. I don't know that I would say they were in
24 03:58:35 charge of it. They were -- it was a collaboration
25 03:58:38 with the publicity department to make those

1 03:58:40 determinations.

2 03:58:41 Q. But here Jackass 2 clips had been syndicated

3 03:58:45 by the interactive marketing department, right?

4 03:58:48 MS. KOHLMANN: Objection.

5 03:58:49 THE WITNESS: As the e-mail indicates, some

6 03:58:51 of the clips were. All of the clips that we

7 03:58:55 syndicated had an official warning before the clips.

8 03:59:00 BY MR. VOLKMER:

9 03:59:07 Q. Right. So what was the purpose of checking

10 03:59:09 with the publicity department if you knew that your

11 03:59:12 department had engaged in online viral marketing of

12 03:59:18 Jackass 2?

13 03:59:18 MS. KOHLMANN: Objection; asked and

14 03:59:18 answered.

15 03:59:20 You can answer.

16 03:59:21 THE WITNESS: We did not have a viral

17 03:59:23 marketing campaign for Jackass 2. All we had was the

18 03:59:27 syndication of a very specific set of clips, all of

19 03:59:30 which had a warning in front of them.

20 03:59:34 BY MR. VOLKMER:

21 03:59:34 Q. Why did you need to check with publicity if

22 03:59:36 you had engaged in a syndication marketing strategy

23 03:59:42 online with respect to Jackass 2?

24 03:59:44 A. With --

25 03:59:44 MS. KOHLMANN: Objection; asked and

Schapiro Exhibit 28

To: "Kevin Donahue" <kevin@youtube.com>
From: "Julie Supan" <julie@youtube.com>
Cc:
Bcc:
Received Date: 2006-05-10 23:00:18 GMT
Subject: Fw: wiredset - working together

Sounds like another Deep Focus opp except paid ;)

-----Original Message-----

From: "Grant Johmann" <grant@wiredset.com>
Date: Wed, 10 May 2006 17:19:33
To: <julie@youtube.com>
Subject: wiredset - working together

Hi Julie,

My name is Grant - I work over at Wiredset - an online marketing agency in NYC. We are all huge fans of YouTube and we upload many of our clients videos to the service. Our best performing videos of the moment are a music video from Flyleaf (over 400,000 views) and weekly clips from the new MTV show - Call to Greatness.

My purpose for this email is to introduce myself, say hi, and hopefully get to know you better and work with YouTube at a higher level. We work with every major label and have clients all over the entertainment industry - and we always get video from them specifically for YouTube.

I'd love to chat over the phone about all possibilities of working together. We are a forward thinking company like yours and have limitless potential for marketing ideas.

I'm mostly free on Thursday and Friday - pls let me know what day/time works best for you.

Look forward to hearing from you.

Thanks,

Grant

--

[Grant M. Johmann]
Wiredset LLC
grant@wiredset.com: <mailto:grant@wiredset.com>
212-242-3400

Wiredset
425 W 13th St.
Suite 504
New York, NY 10014

Eighteen
Visions: <<http://myspace.com/eightenvisions>>

Call to Greatness

As Fast As

Jamie
Foxx: <<http://myspace.com/jamiefoxx>>

Schapiro Exhibit 29

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC., COMEDY)
PARTNERS, COUNTRY MUSIC)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and BLACK)
ENTERTAINMENT TELEVISION, LLC,)
)
Plaintiffs,)
)
vs.) NO. 07-CV-2203
)
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)
vs.) NO. 07-CV-3582
)
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
)
Defendants.)

VIDEOTAPED DEPOSITION OF KYLE BONICI
SAN FRANCISCO, CALIFORNIA
WEDNESDAY, APRIL 22, 2009

BY: ANDREA M. IGNACIO HOWARD, CSR, RPR, CLR
JOB NO. 16739

1 APRIL 29, 2009

2 9:13 a.m.

3
4 VIDEOTAPED DEPOSITION OF KYLE BONICI,
5 held at the offices of WILSON, SONSINI,
6 GOODRICH & ROSATI, One Market Street,
7 Spear Tower, San Francisco, California,
8 pursuant to notice, before ANDREA M. IGNACIO
9 HOWARD, CLR, CCRR, RPR, CSR License No. 9830.
10
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A P P E A R A N C E S:

FOR THE PLAINTIFFS VIACOM INTERNATIONAL INC.:

SHEARMAN & STERLING, LLP

By: KIRSTEN CUNHA, Esq.

599 Lexington Avenue

New York, New York 10022-6069

(212) 848-4000 kirsten.cunha@shearman.com

FOR THE DEFENDANTS YOUTUBE, INC., YOUTUBE, LLC and
GOOGLE, INC.:

WILSON SONSINI GOODRICH & ROSATI, LLP

By: MICHAEL H. RUBIN, Esq.

NEMA MILANINIA, Esq.

650 Page Mill Road

Menlo Park, California 94304

(650) 493-9300 mrubin@wsgr.com

ALSO PRESENT:

PARAMOUNT PICTURES

By: PAUL KOENIG, Esq.

5555 Melrose Avenue

Hollywood, California 90038-3197

(323) 956-5882 paul_koenig@paramount.com

1 A P P E A R A N C E S: (Continued.)

2

3

4

ALSO PRESENT: Ken Reeser, Videographer.

5

6

---oOo---

7

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KYLE BONICI

1

2 09:49:41 A I don't know.

3 09:49:42 Q You don't know?

4 09:49:45 A Huh-uh.

5 09:49:46 Q Do you know how you would find that out?

6 09:49:53 A I could, you know, educate myself and go in

7 09:49:55 and try to, but I don't -- I don't know currently.

8 09:49:58 Q Has anyone at Paramount ever expressed

9 09:50:02 concern over negative comments appearing around

10 09:50:06 Paramount content on the YouTube service?

11 09:50:13 A Not that I recall. Possibly, but not that I

12 09:50:18 recall.

13 09:50:18 Q How many videos have you uploaded to the

14 09:50:23 Paraccount?

15 09:50:24 A I don't recall the amount.

16 09:50:25 Q Roughly.

17 09:50:26 A I couldn't give an accurate estimation. I'm

18 09:50:30 sorry. I couldn't give an accurate estimation, I'm

19 09:50:38 sorry. I'd have to see, like, what's been uploaded,

20 09:50:40 and I could tell you if I uploaded those, but...

21 09:50:46 MR. RUBIN: I'd like to mark Exhibit 4.

22 09:50:47 (Document marked Bonici Exhibit 4

23 09:51:04 for identification.)

24 09:51:04 THE WITNESS: Thank you.

25 09:51:05 MR. RUBIN: Q. Mr. Bonici, this Exhibit 4 is

KYLE BONICI

1
2 09:51:07 a document that someone in my office printed out also
3 09:51:13 on April 28th. This is a listing of all of the videos
4 09:51:17 currently active in the Paraccount in order of most
5 09:51:22 viewed.
6 09:51:24 A Uh-huh. Would you like me to go in --
7 09:51:30 Q Do you recognize this?
8 09:51:31 MS. CUNHA: There's no question yet.
9 09:51:32 THE WITNESS: Sorry.
10 09:51:33 MR. RUBIN: Q. Do you see it says there are
11 09:51:35 "96" videos active in the Paraccount?
12 09:51:38 A Yes.
13 09:51:39 Q Have you ever removed a video from the
14 09:51:42 Paraccount?
15 09:51:46 A I can't recall.
16 09:51:46 Q Do you know if anyone else has ever removed a
17 09:51:49 video from the Paraccount?
18 09:51:51 A I don't know.
19 09:51:52 Q Do you know if anyone else other than you
20 09:52:03 have uploaded videos to the Paraccount?
21 09:52:08 A Not that I recall.
22 09:52:09 Q Have you ever given third parties access to
23 09:52:12 the account credentials for the Paraccount?
24 09:52:15 A I don't know.
25 09:52:17 Q You don't know if you've done that?

KYLE BONICI

1

2

09:52:19 A Oh, personally me? No, I don't recall me

3

09:52:22 ever doing it.

4

09:52:22 Q Do you know if anyone else at Paramount has

5

09:52:25 ever done that?

6

09:52:26 A I don't know.

7

09:52:27 Q Do you believe that the uploading of

8

09:52:37 Paramount content to the Paraccount has been an

9

09:52:40 effective marketing tool for Paramount?

10

09:52:40 MS. CUNHA: Objection to form.

11

09:52:41 THE WITNESS: Please repeat the question.

12

09:52:43 MR. RUBIN: Q. Do you believe the uploading

13

09:52:44 of Paramount content to the Paraccount has been an

14

09:52:49 effected -- effective marketing tool for Paramount?

15

09:52:52 MS. CUNHA: Same objection.

16

09:52:53 THE WITNESS: I don't know. I'm -- I don't

17

09:52:56 know. I'm unaware if it's been effective or not.

18

09:53:02 MR. RUBIN: Q. You continue to do it to this

19

09:53:05 day; is that right?

20

09:53:05 A Uh-huh.

21

09:53:06 Q Does Paramount continue to engage in

22

09:53:09 promotional strategies it believes to be ineffective?

23

09:53:13 MS. CUNHA: Objection to form.

24

09:53:14 THE WITNESS: We're not sure it's

25

09:53:15 ineffective, or we're not sure it's effective either.

Schapiro Exhibit 30

4/28/2009

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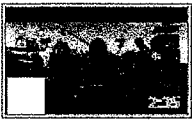
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1 year ago
6,186,562 view s



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1 year ago
2,327,741 view s



Freedom Writers Trailer - YouTube...
2 years ago
1,146,601 view s



See SHOOTER, Now In Theaters!
2 years ago
771,420 view s



The Heartbreak Kid Trailer
1 year ago
680,359 view s



Hot Rod Now in Theaters!!
1 year ago
677,228 view s



The Ruins Trailer
1 year ago
668,111 view s



The Heartbreak Kid - Now Playing!
1 year ago
658,255 view s



Hot Rod In Theaters August 3!!!
1 year ago
644,908 view s



Stardust Trailer 1
1 year ago
605,637 view s



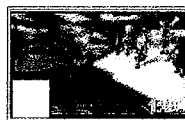
The Last Kiss - Now Playing in T...
2 years ago
411,542 view s



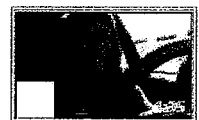
New Star Trek Trailer (2009) - O...
5 months ago
402,624 view s



Bee Movie Trailer 5
1 year ago
327,362 view s



Bee Movie Trailer 1
1 year ago
228,956 view s



Last Kiss: A Day In the Life of ...
2 years ago
158,639 view s



Bee Movie Featurette 1
1 year ago
155,512 view s



Last Kiss: A Day in the Life of ...
2 years ago
154,179 view s



Spiderwick Chronicles
1 year ago
149,667 view s



Perfume - Trailer #1
2 years ago
147,887 view s



Will's Humps!
2 years ago
134,764 view s

1 2 3 4 5 Next

DATE: 4.29.09
DEPONENT: Bonici, K
CASE: Viacom, et al., v. YouTube, et al., The Football Association Premier League, et al., v. YouTube, et al., Case Nos. 07-CV-2203 and 07-CV-3582

A. Ignacio Howard, CSR, RPR, CCRR, CLR, No. 9830

4/28/2009

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Norbit: Meet Rasputia

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122,069 view s



Drillbit Taylor Trailer

1 year ago
115,714 view s



**Indiana Jones:
Kingdom of the Cr...**

11 months ago
96,811 view s



**Charlotte's Web - Gag
Reel**

2 years ago
74,999 view s



Bee Movie Trailer 3

1 year ago
73,553 view s



**See Disturbia This
Weekend! New...**

2 years ago
69,500 view s



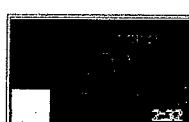
Shine A Light Trailer

1 year ago
54,798 view s



Bee Movie Trailer 2

1 year ago
49,519 view s



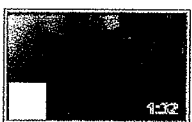
**Spiderwick
Chronicles Trailer 2**

1 year ago
48,420 view s



**I Love You Man,
Trailer (2009) -...**

4 months ago
34,527 view s



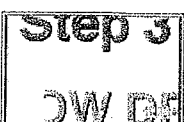
**Broken Bridges
Trailer**

2 years ago
31,981 view s



**Eddie Murphy Make-
Up Sequence**

2 years ago
31,354 view s



**Last Kiss: A Day in
the Life of ...**

2 years ago
30,721 view s



**Beyonce at the
premiere of Dream...**

2 years ago
28,934 view s



**Norbit Clip: "Don't
Adjust My Seat"**

2 years ago
27,152 view s



**Last Kiss: A Day in
the Life of ...**

2 years ago
24,450 view s



**Anika Noni Rose at
the premiere ...**

2 years ago
24,263 view s



Norbit Gag Reel

2 years ago
21,991 view s



**Things We Lost in the
Fire Trailer**

1 year ago
21,765 view s



**Jennifer Hudson at
the premiere ...**

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21,669 view s

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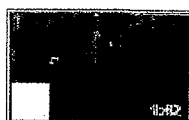
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Eddie Murphy at the premiere of ...
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20,263 view s



Zodiac Trailer
2 years ago
19,837 view s



Dreamgirls Red Carpet Premiere I...
2 years ago
18,669 view s



Hot Rod Trailer 1
1 year ago
18,420 view s



Hot Rod - Trailer 2
1 year ago
15,937 view s



Imagine That Trailer (2009) - Of...
3 months ago
15,871 view s



Last Kiss: A Day in the Life of ...
2 years ago
13,729 view s



Monsters vs Aliens Teaser Traile...
3 months ago
13,561 view s



Last Kiss: Day in the Life with ...
2 years ago
13,519 view s



Last Kiss: A Day in the Life of ...
2 years ago
11,796 view s



Last Kiss: A Day in the Life of ...
2 years ago
11,246 view s



Hotel for Dogs - Teaser Trailer
10 months ago
10,733 view s



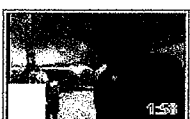
Iron Man Trailer
1 year ago
10,169 view s



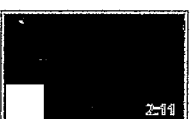
Last Kiss: Day in the Life with ...
2 years ago
9,837 view s



Shooter Trailer
2 years ago
9,288 view s



Last Kiss: A Day in the Life of ...
2 years ago
8,397 view s



Cloverfield Trailer 2 1-18-08
1 year ago
7,247 view s



Jamie Foxx at the premiere of Dr...
2 years ago
7,100 view s



Last Kiss: Day in the Life with ...
2 years ago
6,770 view s



Madagascar: Escape 2 Africa
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6,706 view s

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5,940 views



The Ruins "Excavation" TV Spot
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5,694 views



Beowulf Trailer
1 year ago
5,677 views



Strange Wilderness Trailer
1 year ago
5,583 views



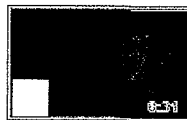
Transformers Trailer
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5,413 views



Stop-Loss Trailer
1 year ago
5,248 views



Monsters vs Aliens - 3/27/09
3 months ago
4,872 views



Transformers tv spot Discovery30
1 year ago
4,636 views



Last Kiss: A Day in the Life of ...
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4,465 views



Last Kiss: A Day in the Life of ...
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4,235 views



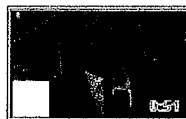
Shrek the Third Trailer
2 years ago
4,019 views



The Ruins "Skin" TV Spot
1 year ago
4,018 views



Eagle Eye - Theatrical Trailer 1
10 months ago
3,122 views



Danny Glover at the premiere of ...
2 years ago
2,553 views



Transformers Trailer - Hidden
1 year ago
1,921 views



Transformers: Revenge of the Fal...
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1,664 views



Dreamgirls director Bill Condon ...
2 years ago
1,445 views



Dance Flick Trailer - 8/14/09
3 months ago
1,136 views



Eagle Eye - Teaser Trailer
10 months ago
1,063 views



Transformers Trailer
2 years ago
1,027 views

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**Monsters vs Aliens:
First Look -...**
3 months ago
911 view s



**Indiana Jones:
KOTCS TVSpot4**
11 months ago
845 view s



The Soloist - Trailer
1 month ago
734 view s



**G.I. Joe - Big Game TV
Spot**
1 month ago
660 view s



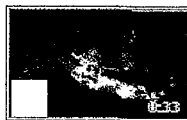
**Indiana Jones
TVSpot8 - RETURN**
11 months ago
652 view s



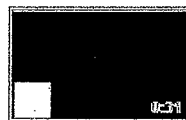
**Indiana
JonesTVSpot9**
11 months ago
516 view s



**Star Trek - Big Game
TV Spot**
1 month ago
499 view s



**Transformers:
Revenge of the Fal...**
1 month ago
439 view s



**Transformers Trailer
- Destiny**
1 year ago
337 view s



**Indiana Jones
TVSpot3 - LEGEND**
11 months ago
303 view s



**Indiana Jones
TVSpot6 - RESTING ...**
11 months ago
239 view s



**Indiana Jones
TVSpot5 - WAITING**
11 months ago
224 view s



**Indiana Jones
TVSpot7 - CONTROL**
11 months ago
197 view s
no rating



**Eddie Murphy in
Imagine That: TV...**
2 weeks ago
167 view s



**Eddie Murphy in
Imagine That: TV...**
2 weeks ago
160 view s

Previous 1 2 3 4 5

Schapiro Exhibit 31

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

VIACOM INTERNATIONAL, INC.,)
COMEDY PARTNERS, COUNTRY MUSIC)
TELEVISION, INC., PARAMOUNT)
PICTURES CORPORATION, and)
BLACK ENTERTAINMENT)
TELEVISION, LLC,)
)
Plaintiffs,)
)
vs.) CASE NO.
) 07-CV-2203
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)
)
_____)
)
THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., ET)
AL., ON BEHALF OF THEMSELVES AND)
ALL OTHERS SIMILARLY SITUATED,)
)
Plaintiffs,)
)
vs.) CASE NO.
) 07-CV-3582
YOUTUBE, INC., YOUTUBE, LLC,)
and GOOGLE, INC.,)
)
Defendants.)
)
_____)

VIDEOTAPED DEPOSITION OF CUONG LAM
New York, New York
Thursday, August 6, 2009

JOB NO: 17462

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A P P E A R A N C E S:

FOR THE VIACOM PLAINTIFFS:

JENNER & BLOCK, LLP
BY: SCOTT B. WILKENS, ESQ.
1099 New York Avenue, NW, Suite 900
Washington, D.C. 20001
202-639-6072
swilkens@jenner.com

FOR DEFENDANT GOOGLE:

WILSON SONSINI GOODRICH & ROSATI, PC
BY: BART E. VOLKMER, ESQ.
650 Page Mill Road
Palo Alto, California 94304-1050
650-493-9300
bvolkmer@wsgr.com

ALSO PRESENT:

AYDALINE GARCIA, VIDEOGRAPHER

C. LAM

Did you create that account?

MR. WILKENS: Objection to the form of
the question.

13:22:52 You can answer.

A. The agency that we hired created that
account.

Q. Which agency?

A. Deep Focus.

13:23:27 Q. I'd like to mark Exhibit 1.

(Lam Exhibit 1, E-mail, dated October
16, 2006, with attachment, Bates Numbered
VIA 10390550 to VIA 10390552 marked for
identification.)

13:23:56 (Document review.)

Q. And Exhibit 1 is an e-mail message
that was sent from Cuong Lam to Tina Exarhos,
Lisa Preston and Joe Armenia on Monday, October
16, 2006.

13:24:28 Do you recognize this document,
Mr. Lam?

A. Yeah.

Q. And this is an e-mail message that you
sent to Ms. Exarhos, correct?

13:24:40 A. It looks that way, yes.

C. LAM

Q. And the message says:

"Attached is the MTV2 digital assets
distribution chart starting with Andy/Wonder
Showzen"?

A. That's correct.

Q. And Wonder Showzen is also a program
that appeared on MTV2, is that right?

A. Yes, that is correct.

Q. If you could turn to the attachment,
which is on the next page.

The attachment is entitled, "MTV2
Program Promotion Digital Assets Distribution
2006 (10-13-06)."

Did you create this chart?

A. Yes.

Q. And do you believe that the data
contained in this chart is accurate?

A. It's pretty accurate, yes.

Q. And this chart shows that a number of
clips were uploaded to YouTube for various MTV2
programs, including Andy Milonakis Show, Wonder
Showzen and Celebrity Death Match, Where My Dogs
At?, Chico & Guapo, Final Fu, and All That Rocks.

Did MTV2 upload materials to YouTube

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C. LAM

to promote those programs?

MR. WILKENS: Objection to the form.

A. Yes.

13:26:19 Q. And the clips from those programs were
uploaded to YouTube with MTV2's authorization,
correct?

MR. WILKENS: Objection to the form.

A. They were uploaded to the MTV2 account
13:26:30 on YouTube as they were across the Internet.

Q. And by uploading the materials to the
MTV2 account, MTV2 was authorizing those
materials to appear on the YouTube service, is
that right?

13:26:52 MR. WILKENS: Objection to the form.

A. Yes.

Q. And the purpose of uploading clips
from those shows to YouTube was to promote the
underlying programming, right?

13:27:05 MR. WILKENS: Objection to the form.

A. The purpose of uploading clips onto
YouTube, as well as various sites listed on this
document, was to use these sites outside of MTV
universe as platforms to promote our shows.

13:27:24 Q. Who is Jeff Castaneda.

C. LAM

A. Jeff Castaneda, I believe, is a director in PR, public relations communications.

I don't know what the official title is.

Q. And Mr. Castaneda uploaded clips from Wonder Showzen and the Andy Milonakis Show to various Internet Web sites to promote those programs, right?

MR. WILKENS: Objection to the form.

A. I'm not sure if he uploaded it himself or what. I'm not sure.

Q. Did you ever communicate with Mr. Castaneda by instant message?

A. I don't think so. I'm pretty -- no.

Q. Earlier you said that you weren't sure if Mr. Castaneda uploaded certain materials himself.

Which materials were you referring to?

MR. WILKENS: Objection.

Mischaracterizes the testimony.

A. I'm not -- I'm not sure. I am not sure as to what Jeff did or did not do. I'm not aware of his work.

Q. Do you recall Mr. Castaneda being

Schapiro Exhibit 32

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE FOOTBALL ASSOCIATION PREMIER)
LEAGUE LIMITED, BOURNE CO., et al.,)
on behalf of themselves and all)
others similarly situated,)
)
Plaintiffs,)
)
vs.) Case No.
) 07CV3582
YOUTUBE, INC., YOUTUBE, LLC, and)
GOOGLE, INC.,)
Defendants.)
)

VIDEOTAPE DEPOSITION OF STEPHEN FARRELL
NEW YORK, NEW YORK
TUESDAY, JULY 14, 2009

JOB NO. 17249

DAVID FELDMAN WORLDWIDE, INC.
450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

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July 14, 2009

6

10:09 a.m.

7

8

VIDEOTAPED DEPOSITION OF STEPHEN

9

FARRELL, held at the offices of Mayer Brown,

10

LLP, 1675 Broadway, New York, New York,

11

pursuant to notice, before Rebecca

12

Schaumloffel, Registered Professional

13

Reporter and Notary Public of the State of

14

New York.

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DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

A P P E A R A N C E S

FOR THE PLAINTIFFS VIACOM
INTERNATIONAL, INC.:

SHEARMAN & STERLING LLP
By: KIRSTEN CUNHA, ESQ.
599 Lexington Avenue
New York, New York 10022
(212) 848-4744
kirstencunha@shearman.com

FOR THE DEFENDANTS:

MAYER BROWN, LLP
BY: A. JOHN MANCINI, ESQ.
ARIC S. JACOVER, ESQ.
1675 Broadway
New York, New York 10019
Jmancini@mayerbrown.com
Asjacover@mayerbrown.com

ALSO PRESENT:

Carlos King, Videographer
Emily Nash

DAVID FELDMAN WORLDWIDE, INC.

450 7th Avenue - Ste 2803, New York, NY 10123 (212) 705-8585

1 FARRELL

13:50:37

2 A. In my current position, I
3 sometimes suggest that, though the
4 actual determination is not made by me,
5 it is usually made by the media
6 department.

13:50:49

7 Q. I understand. In your
8 current company, do you have written
9 materials that you provide to clients
10 about the marketing potential for these
11 types of activities?

13:51:17

12 A. Specifically for stealth
13 placement of these kinds of things, I
14 am not aware of written materials on
15 that.

13:51:28

16 Q. Okay. And by the way, is
17 Viacom a current client of your company
18 in your current position?

19 A. No.

20 Q. So you're not doing any work
21 for Viacom today?

22 A. No.

23 Q. How about any Viacom
24 entities?

13:51:35

25 A. Not that I am aware of, no.

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1 FARRELL

2 Q. And Spike is not a current
3 client of yours?

4 A. Nope.

13:51:42 5 Q. Were you involved in the
6 effort to create an official channel
7 for Spike on YouTube?

8 A. Yes.

13:52:23 9 Q. And when did you first
10 become involved in that effort?

11 A. I don't recall specific
12 dates.

13 Q. Whose idea was it to create
14 a Spike channel on YouTube?

13:52:41 15 A. I don't recall specifically,
16 but I know I was involved.

17 Q. It is fair to say, at some
18 point, Spike channel was launched on
19 YouTube, correct?

13:52:57 20 A. Yes.

21 Q. During your tenure?

22 A. Yes.

23 Q. Do you recall how long that
24 Spike channel actually existed on the
13:53:04 25 YouTube website, approximately?

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1 FARRELL

2 A. Approximately, over
3 six months, under a year.

13:53:19

4 Q. What type of content was
5 posted to that Spike channel on
6 YouTube?

7 A. Short, approved clips of
8 Spike -- a variety of Spike
9 programming.

13:53:30

10 Q. Who made the decision of
11 which clips to feature on that channel?

12 A. Combination of folks from my
13 group and digital and programming and
14 legal.

13:53:46

15 Q. Was one of the reasons you
16 wanted a Spike channel on YouTube, to
17 drive traffic to your television and
18 website presence for Spike?

13:54:02

19 A. To promote both properties,
20 yes.

21 Q. Did you need any sign-off on
22 that decision to launch this channel?

23 A. I don't recall.

13:54:16

24 Q. Was it your ultimate
25 decision?

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1 FARRELL

2 A. I don't recall whether I
3 needed sign-off or it was my ultimate
4 decision.

13:54:21

5 Q. Do you recall how much
6 content was ultimately posted to the
7 Spike channel on YouTube?

8 A. Not specifically, no.

13:54:46

9 Q. Do you recall ever
10 monitoring the traffic to that channel,
11 to that Spike channel on YouTube?

12 A. Yes.

13 Q. What is your recollection of
14 the traffic to that channel on YouTube?

13:54:59

15 A. I recall we got a few
16 thousand subscribers and then traffic
17 was split up by, you know, whatever
18 clips were up there. It wasn't like a
19 whole number, you know, as far as what
20 we got from that channel. It was
21 usually broken up by clips and, you
22 know, how many people we had coming.

13:55:24

23 Q. Some clips were more popular
24 than others?

13:55:33

25 A. Yes.

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Schapiro Exhibit 33

Marketing Meeting Minutes
September 19, 2007

New Projects (Taylor, Kahner):

- Honda Battle of the Bands (9/24 – 10/29)
- Event happens in GA every January. Never been a DVD in the past but there has been such a high demand in the past. This DVD has footage from January 2006 event.
- Client's goal to sell 30,000 DVDs.
- Working in conjunction with Flowers Communications (w/ Ron Childs).
- Campaign components: Online publicity, Promotions, and Grassroots

Coming Up (Kahner):

- Ignited/Bleach (10/1 – 10/31)
 - Video game. Also on Adult Swim. Anime.
 - Video game release date: October 9th
 - 4 weeks of grassroots. Also a Dedicated Email slated to be sent on October 9th (game release day)
- NBC/Talent Scout (TBD) - more info to come later

Partner Update (Christy, My-lan, Michelle):

Funny Or Die <http://www.funnyordie.com/> (Christy)

- Traffic: 775k (NetRatings), 1.8 million (Quantcast), 500k (Compete)
- Video upload site. Will Ferrell is co-owner. Infamous for Landlord Pearl video.
- Celebrities and comedies upload their videos to site. Now site wants more access to musicians and this is where we come in.
- Will write skits, film, edit, and produce everything. We just need to bring the artist to them
- Coming Up: MTV, Fall Out Boy
 - will be the first one from us. Premise = fake press release where they will only ask questions about Ashlee Simpson. Will also have MTV tie-in. Rap Superstars interview FOB asking them what it's like growing up in the 'hood.
- Early pitch to Bon Jovi. Premise = Jon Bon Jovi walks around reciting lyrics to his songs.
- They will allow us to do any promotion as long as there is a celebrity tie-in. Ex. Will not do Jig-A-Loo promo sans celebrity factor
- Please come to Christy if you have artists/clients in mind for this partnership

XXL Magazine <http://www.xxlmag.com/> (Ben)

- Traffic: 102k (NetRatings), 326k (Quantcast), 190k (Compete)
- New contest partner. Will be working our Vegoose promotion. Rotating contest on their front page. Contest went live this morning
- Hip-hop audience. Male leaning demographic.
- Better than Source or Vibe magazines
- They have a new marketing director who is great.

Snorg Tee's <http://www.snorgtees.com/> (Michelle)

- Traffic: 200k (NetRatings), 240k (Quantcast), 175k (Compete)
- T-shirt company. Somewhat similar to Threadless. Their shirts are the ones with weird slogans/phrases from movies, television, and popular culture.
- Early discussions. They have never done promotions or anything new before so they are a bit nervous. They haven't really known what to do with site since it has blown up.
- Company started by 4 guys right out of college 4 years ago. Site is very basic. Lots of potential for us to do promo.
- They have a newsletter (no stats on this yet) but it is pretty bland. Lots of room for us to work with this newsletter, too.
- Demographic = college student

- Pitched The Honorary Title. More pitches to come. Please speak to Michelle if you have any ideas

Publicity Update (My-lan):

MTV Leak: Celebrity Rap Superstar

- Perez Hilton threw a temper tantrum and MTV wanted the world to know about it
- "Leaked" video clip uploaded to iFILM and YouTube
 - covert operation. No one can know that Fanscape or MTV is involved in this.
 - My-lan emailed gossip blogs with fake email address (gossipgirl40).
 - Not many sites picked it up except the smaller blogs (who pick up anything thrown their way)
 - TMZ picked up video but put it up on their media player, not our YouTube link. Same with iFilm.
 - By Saturday midnight there were 1,000 views on YouTube (that My-lan put up)
 - Gawker put up leak #2 yesterday at 1pm and today there have been 7,000 views
 - We should Digg the video. Also, should use Tube Mogul from start to be able to track views everywhere
 - Is this against WOMMA? Room feels WOMMA doesn't apply because this is the PR/gossip blog world and stunts/leaks/tips happen all the time.
 - Huge success with leaks for MTV. MTV will most likely do this more often. Our publicity team can only benefit from learning experience. See what works and what doesn't.

Media Update (Lisa)

Fanscape Survey: Mobile

- Results from a brief survey. Asked people whether or not they would be interested in receiving an EMAIL newsletter vs. newsletter on their CELL PHONES (about the latest mobile tech and promotions)
 - Almost 50% prefer email to mobile
 - Almost 75% said they were NOT interested in newsletters on their cells
- What's it all mean?
 - we should insert mobile info into newsletters.
 - people are still afraid of giving out their mobile number due to unexpected charges and the like. Odd because mobile technology is getting better. Stigma still lingers.
 - maybe reassure people that they will not get charged crazy fees. Also give them free prize for participating?

Fanscape stats

- Traffic analysis data report
- August 1 = 1 million in our database
- Fanscape newsletter open rate = 8.4%
- Dedicated email open rate = 23%
- Industry average for newsletter open rates = 8%
- Fanscape.com views for August = 160,820
- Contests page views = 19,990
- Blog page views = 5,000 (up from 815 views in May). Should update blog regularly with compelling content to continue to drive traffic
- Fanfeeds = 1.37 million views. Not sure which fanfeed is getting most views.
- Please ask Lisa Jenkins for more info regarding stats.
- JP and Lisa are working on benchmark grid for more conclusive data to compare to. More authority to our numbers.

Schapiro Exhibit 34

Subject: RE: disturbia / paris
From: "Powell, Amy - Paramount" [REDACTED]

To: Wahtera, Megan - Paramount; Simard, Stephanie - Paramount;
Chiang, Cat - Paramount; Teifeld, Tamar - Paramount
Cc: Date: Mon, 11 Jun 2007 15:24:59 +0000

should definitely not be associated with the studio- should appear as if a fan created and posted it.

From: Wahtera, Megan - Paramount
Sent: Mon 6/11/2007 7:34 AM
To: Powell, Amy - Paramount; Simard, Stephanie - Paramount; Chiang, Cat - Paramount; Teifeld, Tamar - Paramount
Subject: RE: disturbia / paris

hi amy -

we will definitely get this posted.
we assume you want kt/tt to go out to webmasters, plus for us to upload to viral video sites.

for viral video sites - can you confirm you want us to post from random accnts that are not paramount related?

thanks!
megan

-----Original Message-----

From: Powell, Amy - Paramount
Sent: Sun 6/10/2007 4:56 PM
To: Simard, Stephanie - Paramount; Wahtera, Megan - Paramount; Chiang, Cat - Paramount; Teifeld, Tamar - Paramount
Subject: disturbia / paris

see below... can you guys get this posted? it's funny.

From: Sauter, Jeremy - Paramount
Sent: Fri 6/8/2007 7:00 PM
To: Powell, Amy - Paramount; Rich, Gerry - Paramount; Waldman, David - Paramount; Vollman, Michael - Paramount
Subject: Fw: Posted

Amy -
Want to post this?
J-

Jeremy Sauter
Paramount Pictures

----- Original Message -----

From: Mark Lipsky [REDACTED]
To: Sauter, Jeremy - Paramount
Sent: Fri Jun 08 18:56:45 2007
Subject: Posted

Jeremy,
We have posted Disturbia "Paris" :30 V.1 to our website. I have listed

log in information below.

Once you log in you will come to a page with a Disturbia Icon on it and it will bring you to another page with a file tree on the left hand side. Click the top file that will say Disturbia. This will bring you to another page with a thumbnail in the center of the page. To download the spot option click the download icon below the thumbnail. If you want to watch the spot on the website click the thumbnail then click the click here to play icon and wait for them to load. Give me a call with any questions.

Mark

link:

<http://secure.wiredrive.com/clients/buddhajonestrailers/wd/folder/55341/list>



Schapiro Exhibit 35

Subject: RE: FW / YT
From: "Powell, Amy - Paramount" [REDACTED]
To: Tipton, Kristina - Paramount; Wahtera, Megan - Paramount;
Simard, Stephanie - Paramount; Bordo, Sara - Paramount
Cc: Date: Fri, 17 Nov 2006 17:52:12 +0000

Sorry, but I don't understand...?

Amy Powell
Senior Vice President
Interactive Marketing
Paramount Pictures
[REDACTED]

From: Tipton, Kristina - Paramount
Sent: Friday, November 17, 2006 9:46 AM
To: Powell, Amy - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount
Subject: RE: FW / YT

Hi Amy,

To add it, it was temporarily added to our BeHeard favorites, but immediately taken off. There is no way to tell who submitted the video, or that the video was at one time listed under our favorites.

Let me know if you have any questions.

Kristina Tipton

Paramount Pictures

Interactive Coordinator, Promotions & Publicity

323-956-8453

From: Powell, Amy - Paramount
Sent: Friday, November 17, 2006 9:22 AM
To: Tipton, Kristina - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount
Subject: RE: FW / YT

Grt. Lets just be super careful with how we're linking it, etc. I would have someone out of house be the conduit.

Amy Powell
Senior Vice President
Interactive Marketing
Paramount Pictures
[REDACTED]

From: Tipton, Kristina - Paramount
Sent: Friday, November 17, 2006 9:21 AM
To: Powell, Amy - Paramount; Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Bordo, Sara - Paramount
Subject: RE: FW / YT

Yes, we have the LAPD video on our group, and I'll leave a post in the comments for the LAPD video linking back to our group.

Let me know if you have any questions.

Kristina Tipton

Paramount Pictures

Interactive Coordinator, Promotions & Publicity

323-956-8453

From: Powell, Amy - Paramount
Sent: Friday, November 17, 2006 7:55 AM
To: Wahtera, Megan - Paramount; Simard, Stephanie - Paramount; Tipton, Kristina - Paramount; Bordo, Sara - Paramount
Subject: FW / YT
Importance: High

i'm assuming we have the LAPD videos linking to ours and on our profile.. yes? if not, lets urgently get them loaded onto our profile- they could not be more relevant or viral right now. pls confirm.